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09/607,313

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REMARKS

Claims 1 - 26 have been cancelled and will be prosecuted in a separate application. The remaining claim 27 is directed to a paintbrush/container/lid confectionery combination.

In paragraph 1 of the Office Action dated May 8, 2001, the Examiner rejected claim 12 under 35 U.S.C. 112 as being indefinite. This claim has been cancelled.

In paragraphs 2-4 of the Office Action, the Examiner rejected claims 1-27 under 35 U.S.C. 102(a) as being unpatentable over the brochure on "Paint Pop" in view of Glynn et al and Mochizuki et al. The Paint Pop product is a roller, paint tray, and packet containing candy powder. Mochizuki et al discloses pressurized gas-entrapping candy. Glynn et al. discloses illuminable candy. Since Mochizuki et al is directed to pressurized gas-entrapping candy and Glynn et al. is directed to only one independent claim (claim 14) that is not now prosecuted, our comments below are focused on the Paint Pop product.

Clearly the Paint Pop product does not have at least three positively claimed elements in Claim 27: a paint brush, a can and a lid. These elements simply are not found in the Paint Pop reference. In particular, the flowable confectionery is not in a container including a lid. The packet in Paint Pop is not resealable after initial opening for use. Moreover, when the candy powder is placed (contained) in the Paint Pop tray, it is out in the open but still cannot be closed or sealed for later use within the tray. Applicant's lid has several uses as follows: 1) The candy is kept sanitary; 2) the candy can be reused later; 3) different types of candy can be placed in the container, including liquids, powders and solids; and 4) the candy does not fall out. In contrast, the Paint Pop tray has no lid at all. The Examiner indicated it would be obvious to include a lid. However, the Paint Pop product does not show or suggest a lid nor would one imagine a lid on a paint tray. Once the packet is opened and poured into the Paint Pop tray, the powder is entirely and permanently open. In addition, the Paint Pop product, because it has no lid, has a separate packet containing the powder candy. The user has to open the packet to release the

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powder, and place the powder in the tray before it can be used. In contrast, Applicant's confectionery is in the container and ready for use and does not require tearing open of a package and release of the powder into the tray.

Further, the Paint Pop product has a roller; not a paint brush with bristles. The Paint Pop product has a tray, not a can. And, again, it has no lid as with Applicant's invention.

The Examiner did not specifically address claim 27 which is directed to packaging in which the "packaging comprises a paint brush holder attached to said can." This packaging serves to keep the pieces together so that individual parts are not lost between manufacture and consumption. The Paint Pop roller is completely separable from the Paint Pop tray and candy powder when being used and can be easily lost.

The only thing in common between the Paint Pop product and Applicant's invention is that they derived from a "paint" idea. This is not enough to reject Applicant's claims, which ^{has} have a particular paint brush/container/lid confectionery combination not anticipated or suggested by Paint Pop or the other references cited by the Examiner, alone or in combination.

Concerning Mochizuki et al., we do not know why the Examiner cited this reference. There was no claim directed to pressurized gas-entrapping candy.

Concerning Glynn et al., it discloses a lightbulb that illuminates an Easter egg, a candy cane, a coffin, a horror house, a mining cave, and other scenes. It does not suggest or anticipate paint brush/can/lid candy.

It is believed that all of Applicant's remaining claims are allowable.

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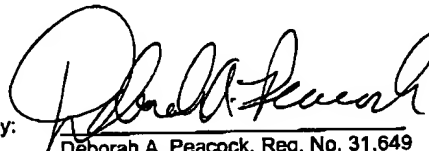
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**PLEASE NOTE THAT THIS APPLICATION HAS BEEN GRANTED SPECIAL STATUS
BECAUSE OF ACTUAL INFRINGEMENT.** Accordingly, it is requested that a response be expedited and
that the Examiner call the undersigned immediately to discuss the action if not allowable.

Respectfully submitted,

Dated: 5/24/01

By:


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